

By Bill L. Carter

H.B. No. 838

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of polygraph examiners and the transfer of certain functions regulating polygraph examiners to the Commission on Law Enforcement Officer Standards and Education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes) is amended by adding Section 1A to read as follows:

Sec. 1A. ADMINISTRATIVE FUNCTIONS TRANSFERRED. Certain functions relating to the administration of this Act are transferred to the Commission on Law Enforcement Officer Standards and Education in accordance with Chapter 415, Government Code. To the extent of a conflict between this Act and Chapter 415, Government Code, Chapter 415, Government Code, prevails.

SECTION 2. Section 4, Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. MINIMUM INSTRUMENTATION REQUIRED. Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern; [and] (2) a subject's respiratory pattern; and (3) a subject's galvanic skin response. Patterns of other physiological changes in addition to (1), [and] (2), and (3) may also be

1 recorded. The use of any instrument or device to detect deception  
2 or to verify truth of statements which does not meet these minimum  
3 instrumentation requirements is hereby prohibited and the operation  
4 or use of such equipment shall be subject to penalties and may be  
5 enjoined in the manner hereinafter provided. The sole use of a  
6 voice stress analyzer, a psychological stress evaluator, or a  
7 similar voice actuated instrument is prohibited regardless of the  
8 semantics used to report the diagnostic opinions of the operator of  
9 the device or instrument.

10 SECTION 3. Sections 5(b) and (k), Polygraph Examiners Act  
11 (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to  
12 read as follows:

13 (b) The board shall contract with the Commission on Law  
14 Enforcement Officer Standards and Education [~~Department of Public~~  
15 ~~Safety~~] for the administrative functions of the board that are not  
16 transferred under Section 1A of this Act and Chapter 415,  
17 Government Code, including the collection of all fees and money due  
18 and the payment of all expenses, including travel expenses of board  
19 members. Each member of the board is entitled to a per diem as set  
20 by legislative appropriation for each day that the member engages  
21 in the business of the board. A member may not receive any  
22 compensation for travel expenses, including expenses for meals and  
23 lodging other than transportation expenses. A member is entitled  
24 to compensation for transportation expenses as prescribed by the  
25 General Appropriations Act.

26 (k) A polygraph examiner licensed in this state must attend  
27 not less than 40 hours of [~~The board--may--recognize,--prepare,--or~~

1 ~~implement~~] continuing education during every two-year period  
2 ~~[programs-for-polygraph-examiners-and-trainees]~~. The board by rule  
3 shall establish criteria for continuing education programs and  
4 shall ensure that every license holder has the opportunity to  
5 attend continuing education programs by either providing programs  
6 or approving the programs offered by other sources [Participation  
7 ~~in-the-programs-is-voluntary~~].

8 SECTION 4. Sections 6(d) and (e), Polygraph Examiners Act  
9 (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to  
10 read as follows:

11 (d) The financial transactions of the Commission on Law  
12 Enforcement Officer Standards and Education [~~Department-of-Public~~  
13 ~~Safety~~] that relate to the administration of this Act are subject  
14 to audit by the state auditor in accordance with Chapter 321,  
15 Government Code.

16 (e) On or before January 1 of each year, the Commission on  
17 Law Enforcement Officer Standards and Education [~~Department-of~~  
18 ~~Public-Safety~~] shall make in writing to the governor and the  
19 presiding officer of each house of the legislature a complete and  
20 detailed report accounting for all funds received and disbursed by  
21 the commission [~~department~~] under this Act during the preceding  
22 year.

23 SECTION 5. Section 8(a), Polygraph Examiners Act (Article  
24 4413(29cc), Vernon's Texas Civil Statutes), is amended to read as  
25 follows:

26 (a) A person is qualified to receive a license as an  
27 examiner if the person previously held a license under this Act and

1 meets the requirements for a new license under Section 17 of this  
2 Act or if the person:

3 (1) [who] has not been convicted of a felony or a  
4 misdemeanor involving moral turpitude; [and]

5 (2) [who] holds a baccalaureate degree from a college  
6 or university accredited by an organization that the board  
7 designates and that the board determines has accreditation  
8 standards to ensure a high level of scholarship for students, or in  
9 lieu thereof, has three [five] consecutive years of active  
10 investigative experience immediately preceding his application and  
11 has completed not less than 60 credit hours in a college or  
12 university or the equivalent amount of hours and courses required  
13 for an associate degree from an accredited college or university;  
14 [and]

15 (3) [who] is a graduate of a polygraph examiners  
16 course or a course in the science of the psychophysiological  
17 detection of deception approved by the board and has satisfactorily  
18 completed not less than six months of internship training[  
19 ~~provided--that--if--the--applicant-is-not-a-graduate-of-an-approved~~  
20 ~~polygraph-examiners-course,--satisfactory--completion--of--not--less~~  
21 ~~than---12---months---of---internship---training---may--satisfy--this~~  
22 ~~subdivision~~]; and

23 (4) [who] has passed an examination conducted by the  
24 board, or under its supervision, to determine his competency to  
25 obtain a license to practice as an examiner.

26 SECTION 6. Section 17(e), Polygraph Examiners Act (Article  
27 4413(29cc), Vernon's Texas Civil Statutes), is amended to read as

1 follows:

2 (e) If a person's license has been expired for two years or  
3 more, the person may not renew the license. The person may obtain  
4 a new license by submitting to reexamination [~~and-complying-with~~  
5 ~~the-requirements-and-procedures-for-obtaining-an-original-license~~].

6 SECTION 7. Section 24A(b), Polygraph Examiners Act (Article  
7 4413(29cc), Vernon's Texas Civil Statutes), is amended to read as  
8 follows:

9 (b) Each written contract for the services in this state of  
10 a licensed polygraph examiner and each waiver of liability that is  
11 signed by the subject of a polygraph examination shall contain the  
12 name, mailing address, and telephone number of the board. A waiver  
13 of liability or a written consent and release form signed by the  
14 subject of a polygraph examination must also include a request that  
15 the subject authorize the polygraph examiner to disclose  
16 information acquired from the polygraph examination to the board or  
17 the board's representative to determine compliance with this Act.

18 SECTION 8. Subchapter A, Chapter 415, Government Code, is  
19 amended by adding Section 415.016 to read as follows:

20 Sec. 415.016. ADMINISTRATION OF POLYGRAPH EXAMINERS;  
21 DEFINITION. (a) In this section, "board" means the Polygraph  
22 Examiners Board.

23 (b) The commission shall perform the following functions  
24 that are necessary or useful to the administration of the Polygraph  
25 Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes):

26 (1) data processing functions;

27 (2) personnel administration services, including the

1 administration of records relating to payroll, personnel files,  
2 vacation and other leave records, employee insurance and other  
3 benefits records, and employee applications;

4 (3) other recordkeeping functions; and

5 (4) functions related to the purchasing or other  
6 acquisition of property.

7 (c) The functions transferred to the commission by  
8 Subsection (b) are of an administrative nature. The transfer of  
9 functions does not authorize the commission to make any decision  
10 about whether a property acquisition should be made by the board  
11 and does not authorize the commission to make personnel decisions  
12 regarding board employees assigned to carry out the policy or  
13 regulatory functions of the board such as the hiring, transfer,  
14 termination of employment, or discipline of an employee. The  
15 commission may make personnel decisions of that type regarding a  
16 board employee assigned to perform any functions described by  
17 Subsection (b).

18 (d) The board may not use its employees to perform a  
19 function described by Subsection (b) and may not contract with  
20 another entity to perform the function unless authorized to do so  
21 by the commission.

22 (e) The commission may authorize the board to perform a  
23 function described by Subsection (b) only if the board employees  
24 are necessary to assist the commission in the performance of its  
25 functions under Subsection (b) or if the commission finds in  
26 writing that a significant financial savings to the state will be  
27 achieved by the board's performance of the function. The finding

1 must be supported by evidence clearly showing the savings. The  
2 commission shall monitor the board's performance of the function  
3 and shall withdraw the board's authority to perform the function if  
4 the significant savings do not occur.

5 (f) At the appropriate time in each state fiscal biennium,  
6 the board shall prepare its recommended budget covering the board's  
7 functions and shall submit that recommendation to the Legislative  
8 Budget Board and the appropriate committees of the legislature.

9 (g) The commission annually shall review the budgeted  
10 expenditure of and the fees collected by the board. The commission  
11 and the board shall establish by contract the amounts of revenue  
12 that must be collected by the board to recover:

13 (1) all the budgeted costs of the board;

14 (2) the board's pro rata share of the commission's  
15 costs in performing functions for the board under this section; and

16 (3) all indirect costs incurred by the state in the  
17 administration of the law under the board's jurisdiction, as those  
18 costs are identified by a statewide cost accounting plan prepared  
19 by the governor or, if the governor does not prepare such a plan,  
20 as those costs are identified by the commission.

21 (h) The board shall set its fees in amounts that will  
22 produce the amount of the revenue determined under Subsection (b).  
23 The commission must certify to the comptroller of public accounts  
24 that the board's fee schedule will adequately produce the revenues  
25 before the board may expend any funds appropriated to the board.

26 (i) This section does not authorize the board to set a fee  
27 in an amount that is not otherwise permitted by law. If the fee

1 schedule permitted by law is inadequate to produce adequate  
2 revenue, the commission shall report that fact to the Legislative  
3 Budget Board and the presiding officer of each house of the  
4 legislature and shall request that legislation be prepared to  
5 authorize the necessary revenue.

6 SECTION 9. (a) This Act takes effect September 1, 1993.

7 (b) The Commission on Law Enforcement Officer Standards and  
8 Education shall begin performing the duties prescribed by Section  
9 415.016, Government Code, as added by this Act, on a date after the  
10 effective date of this Act determined by order of the commission.  
11 Before that date, the Polygraph Examiners Board shall continue to  
12 perform the functions transferred by that section. The Commission  
13 on Law Enforcement Officer Standards and Education shall assume the  
14 transferred functions not later than September 1, 1994.

15 SECTION 10. The importance of this legislation and the  
16 crowded condition of the calendars in both houses create an  
17 emergency and an imperative public necessity that the  
18 constitutional rule requiring bills to be read on three several  
19 days in each house be suspended, and this rule is hereby suspended.



**H. B. No.**

By

**A BILL TO BE ENTITLED**

**AN ACT**

relating to the regulation of polygraph examiners and the transfer of certain functions regulating polygraph examiners to the Commission on Law Enforcement Officer Standards and Education.

FEB 11 1993

**1. Filed with the Chief Clerk.**

FEB 15 1993

**2. Read first time and Referred to Committee on**

## PUBLIC SAFETY

3. Reported \_\_\_\_ favorably (as amended) and sent to Printer at \_\_\_\_  
(as substituted)

4. Printed and distributed at \_\_\_\_\_

5. Sent to Committee on Calendars at \_\_\_\_\_

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)  
(Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_  
present, not voting).

7. Motion to reconsider and table the vote by which H.B. \_\_\_\_\_ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of \_\_\_\_\_ years, \_\_\_\_\_ days, \_\_\_\_\_ present, not voting).

**10. Caption ordered amended to conform to body of bill.**

11. Motion to reconsider and table the vote by which H. B. \_\_\_\_\_ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

12. Ordered Engrossed at \_\_\_\_\_

**13. Engrossed.**

14. Returned to Chief Clerk at \_\_\_\_\_

**15. Sent to Senate.**

### Chief Clerk of the House

## 16. Received from the House

17. Read, referred to Committee on \_\_\_\_\_

**18. Reported favorably**

**19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.**

**20. Ordered not printed.**

21. Regular order of business suspended by \_\_\_\_\_  
(a viva voce vote.)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 22. To permit consideration, reading and passage, Senate and Constitutional Rules  
suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ 23. Read second time \_\_\_\_\_ passed to third reading by:  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 24. Caption ordered amended to conform to body of bill.

\_\_\_\_\_ 25. Senate and Constitutional 3-Day Rules suspended by vote of \_\_\_\_\_ yeas,  
\_\_\_\_\_ nays to place bill on third reading and final passage.

\_\_\_\_\_ 26. Read third time and passed by  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

OTHER ACTION: OTHER ACTION:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_ 27. Returned to the House.

\_\_\_\_\_ 28. Received from the Senate (with amendments.)  
(as substituted.)

\_\_\_\_\_ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record  
(Substitute) Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present,  
not voting).

\_\_\_\_\_ 30. Conference Committee Ordered.

\_\_\_\_\_ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record  
Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

\_\_\_\_\_ 32. Ordered Enrolled at \_\_\_\_\_